UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv170

v.

KENYA WHITAKER AND EASY SOFTWARE SOLUTIONS, LLC.,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE DEFENDANTS' REQUEST FOR ATTORNEY'S FEES

Now comes the Plaintiff and Counterclaim-Defendant, JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty"), by counsel, and for its Memorandum in Support of its Motion to Strike Defendants' Request for Attorney's Fees, states as follows:

FACTS

The Defendants and Counterclaim-Plaintiffs Kenya Whitaker and Easy Software Solutions, LLC (collectively "Whitaker") filed a Counterclaim against Liberty requesting, among other things, an award of reasonable attorney's fees and expenses incurred by Whitaker in prosecuting this action. *See*, *Counterclaim*, *Prayer for Relief*, p. 8, item (e).

However, the franchise agreement at issue does not provide for an award of attorney's fees, and Whitaker does not rely upon any statute or other legal basis to support an award of attorney's fees.

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DISCUSSION

There is no provision in the franchise agreement for a litigant to recover attorney's fees against the other party. Further, Whitaker has cited no statute or other basis upon which she could properly be awarded attorney's fees in this case. Hence, no legal basis exists upon which to request or receive an award of attorney's fees in this case. *See, Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (U.S. 1975) (under the American Rule, the prevailing litigant is not entitled to collect attorney's fees from the loser absent a contractual right, statute, bad faith litigation or a common fund).

Hence, Whitaker's request for attorney's fees should be struck.

WHEREFORE, in consideration of the foregoing, Liberty respectfully requests that this Court strike the request for attorney's fees interposed by the defendants in this matter.

Respectfully submitted,

JTH Tax, Inc. d/b/a Liberty Tax Service

By: ________/s/________
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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